

Appl. No. 09/881,041  
Response dated February 12, 2010  
Reply to final Office Action mailed November 13, 2009

## REMARKS

### I. Status of Claims

Claims 1-7 are pending. Claim 1 is independent.

### II. Rejections Under 35 U.S.C. § 112, first paragraph

The Examiner rejects claims 1-7 under 35 U.S.C. § 112, first paragraph for allegedly lacking explicit, implicit, or inherent support in the specification for the claim recitation relating to information which relates to the selected treatment program “and is selected to advise the patient on how to improve the integration of the selected treatment program into the patient's lifestyle.” Applicants respectfully direct the Examiner's attention to the following sections of the specification with references to the published patent application no. 20020072933.

Paragraph [0053] describes using the system to determine progress of a patient on a selected treatment program. Paragraph [0077] describes an exemplary embodiment wherein progress is assessed by the system (e.g., client information in a database is analyzed to determine when physiological data from the client 112 corresponds to values outside normal limits).

With reference to paragraph [0053], once a client is enrolled in a network, a healthcare manager develops a client plan of care (CPOC) and medical plan of care (NPOC) for the client 112 in cooperation with the care providers, such as the primary care physicians, hospitals and specialists (step 1200). In step 1300, the healthcare managers accordingly care for their respective clients 112 between the primary care team and extended care teams, while also receiving, monitoring and evaluating information provided by the clients 112. During this time, the clients 112 are also responsible for monitoring and managing their conditions, and providing data to the centralized database 104. In step 1400, *the healthcare managers review the status of their respective clients 112 and compare their client's progress to expected outcomes. The managers can coordinate with the care providers to revise the CPOCs and MPOCs for their respective clients 112, and report relevant information to the clients, PCTs, ECTs and payors, as necessary.*

With reference to paragraph [0077], the healthcare manager tracks physiological data from the client 112 and responds to values outside the normal limits. The healthcare

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manager can contact the physician as appropriate with values outside the normal limits, and tracks the survey data provided by the client 112 in the SF-36, food diary, or a stress audit. The physician can respond to the healthcare manager in an efficient and effective *manner regarding physiological parameters outside the desire limits, as appropriate. During this time, the centralized network 102 is receiving input of the data and using preset parameters to determine if the data is outside normal limits. The centralized network 102 notifies the healthcare manager of the data that is outside the limits*, and receives, stores and tracks the data provided by the client 112.

Paragraphs [0047], [0073], [0077], [0078] and [0095], describe how the claimed system selects information relating to a selected treatment program to advise a patient on how to improve integration of the treatment program into the patient's lifestyle in response to the above progress determination. As stated above in paragraph [0053], clients or patients 112 are responsible for monitoring and managing their conditions, and providing this information to the centralized database 104. Paragraph [0047], for example, describes how the system permits members of a care team to review the client information in the database and *provide treatment information and recommendations to the client.*

[0047] The clients 112 are provided with monitoring or diagnostic tools (e.g., blood pressure measuring devices 116, electronic scales 118, disease management information charts 120, and various other devices which can be used to obtain diagnostic and assessment information from the clients 112). The clients 112 use these tools to enter information about themselves and their condition into the centralized database 104 and then communicate personal information via their workstations 114. *Members of their care team 106 can review that information and monitor the clients' status as well as provide treatment information and recommendations to the client 112.*

As described in paragraph [0073], in step 1330, the client 112 executes self-management and self-education. That is, the client 112 integrates the MPOC and CPOC into his or her lifestyle consistently, while exploring and following self-education modules and asking questions during the regularly scheduled encounters with the healthcare manager. *The healthcare manager tracks client's responses to self-education modules, assesses the responses for consistent integration of CPOC and MPOC into the client's lifestyle.* With reference to paragraph [0077], during this

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activity, *the healthcare manager tracks physiological data from the client 112 and responds to values outside the normal limits.* The healthcare manager can contact the physician as appropriate with values outside the normal limits, and tracks the survey data provided by the client 112 in the SF-36, food diary, or a stress audit. The physician can respond the healthcare manager in an efficient and effective manner regarding physiological parameters outside the desire limits, as appropriate. *During this time, the centralized network 102 is receiving input of the data and using preset parameters to determine if the data is outside normal limits. The centralized network 102 notifies the healthcare manager of the data that is outside the limits,* and receives, stores and tracks the data provided by the client 112. See also paragraph [0078], wherein the healthcare manager reviews the data from the client 112 regularly, evaluates whether the data is consistent with expected outcomes, and communicates with the client 112 regarding inconsistent outcomes. The data is archived and surveyed by the centralized network 102, which can send data messages from the client 112 to the healthcare manager for evaluation. *The client 112 also learns of ongoing evaluation and receives personal responses from the healthcare manager, as well as outcomes relating to the MPOC and CPOC.*

Paragraph [0095] describes a manager's evaluation process 2100. During the evaluation process, the manager determines in steps 2105, 2115 and 2125 whether individual client outcomes, generic standards and population outcomes, respectively, need to be evaluated and evaluates the outcomes as appropriate in steps 2110, 2120 and 2130, respectively. With reference to paragraph [0097], the manager's activity then proceeds to the education process in step 2200. *During the evaluation process, the manager determines in steps 2205, 2215, 2225, 2235, 2245 and 2255 whether information relating to the client's treatment program, medication, stress and activity, disease process, symptom management and nutrition, respectively, should be conveyed to the client 112.* If any of this information should be conveyed, the

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manager provides the information to the client 112 in steps 2210, 2220, 2230, 2240, 2250 and 2260, respectively, as appropriate. *The manager then determines in step 2265 whether helpful health tips should be provided to the client 112 in step 2270.* The manager then reports the data obtained in the above steps to the centralized network 102, which can store the data in the centralized data base 104 as necessary.

Thus, the Applicants respectfully submit that the specification provides explicit support for information that relates to a selected treatment program and is selected to advise a patient on how to improve the integration of the selected treatment program into the patient's lifestyle. Withdrawal of the 35 U.S.C. §112, first paragraph rejection of claim 1 is requested.

### **III. Rejections Under 35 U.S.C. § 112, second paragraph**

The Examiner rejects claims 1-7 under 35 U.S.C. § 112, second paragraph for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner points to the claim recitation "advise the patient on how to improve the integration" in claim 1 and states that "integration improvements are subjective." The Examiner appears to be arguing that, if the integration improvements are subjective, then the claim is rendered indefinite "since it is not clear from the claim what the scope of the advice includes."

Applicants disagree and submit that claim 1 is definite as written. First, the claim does not recite "advice" per se as the Examiner contends. Claim 1 recites information that "relates to the selected treatment program" and "is selected to advise a patient on how to improve the integration of the selected treatment program into the patient's lifestyle." In other words, the information is selected to inform the patient on how to improve the integration.

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Applicants submit that “to improve” the integration of a selected treatment program into one’s lifestyle is readily discernible. As described above in connection with paragraphs [0047] and [0077], for example, the claimed system can determine client physiological data values that are outside normal limits and provide a client with treatment information and recommendations (e.g., to improve the physiological data values) in accordance with an exemplary embodiment. Further, with reference to the Deputy Commissioner for Patent Examination Policy (DCPEP) memorandum dated September 2, 2008, even if the claim term “to improve the integration” was not defined or used in the specification, it is discernible and hence not indefinite because “the components of the term have well recognized meanings, which allow the reader to infer the meaning of the entire phrase with reasonable confidence”. In other words, “improve” has a well recognized meaning.

Even if the recitation “to improve” the integration of a selected treatment program is arguably not precise, which Applicants do not concede, the fact that claim language may not be precise does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph. *Seattle Box Co., v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification. See MPEP 2173.05(b). Applicants respectfully submit that one of ordinary skill in the art would understand what is claimed, in light of the specification, in view of at least paragraphs [0047] and [0077].

The Examiner also states that it is not clear from claim 1 who or what advises the patient and indicates that the advise is performed by the health care provider. Applicants submit that the claim subsection in question recites a computer network configured with electronic assessment tools that determine whether

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information needs to be conveyed to the patient. Thus, it is the recited information that advises the patient once conveyed.

Finally, the Examiner states that the claim recitation is non-functional descriptive information with no patentable weight. This is also incorrect. The recitation should be given patentable weight as it further limits “information” that is determined whether to be conveyed in response to the progress determination. The Examiner similarly attempted to assert that other recitations in claim 1 were not to be given patentable weight and was overruled by the Board of Patent Appeals and Interferences on page 17 of its Decision on Appeal decided on July 28, 2009.

In view of the foregoing, withdrawal of the 35 U.S.C. §112, second paragraph rejection of claim 1 and its dependent claims 2-7 is respectfully requested.

#### **IV. Rejections Under 35 U.S.C. § 103(a)**

The claims 1-7 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,867,821 to Ballantyne et al (hereinafter “Ballantyne”) in view of U.S. Patent No. 6,283,761 to Joao (hereinafter “Joao”), and further in view of U.S. Patent No. 5,937,387, to Summerell et al (hereinafter “Summerell”). In the Response to Arguments section of the final Office Action, the Examiner states “that it is not clear from the claim whether the information is directed to the patient or health provider.” This is incorrect. Claim 1 recites “whether information, which relates to..., needs to be *conveyed to the patient...*” (emphasis added). Thus, the claim clearly recites that the information is directed to the patient.

The Response to Arguments section of the final Office Action also states “Therefore, the Applicant’s arguments only potentially applicable [sic] if the claims are read through the Applicant’s narrow review.” First, this statement is unclear. Nonetheless, this statement is inapplicable since the claim recites that the

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information is conveyed to the patient. The Examiner has improperly ignored this claim recitation. Applicants respectfully submit that the Examiner has not fully responded to the following arguments set forth in the Amendment and Response dated September 25, 2009. If the application is not deemed allowable, then Applicants respectfully request another Office Action responding to these arguments to afford Applicants an opportunity to respond.

Applicants respectfully submit that Joao does not teach or suggest the invention recited in claim 1.

On page 19 of the Decision, the Board relies on Joao (i.e., 27:58-67 and 28:38-60 as indicated in the Findings of Fact (FF) 16 on page 11 of the Decision) to purportedly teach the last claim element of claim 1 directed to said computer network being configured with electronic assessment tools to allow a health care provider to assess said patient health-related data to determine progress of the patient on the selected treatment program and whether information needs to be conveyed to the patient in response to said progress determination.

The text referred to in FF16 (Joao 27:58-67) of the Decision does not mention reports. Thus, the Board relies on the evaluation report in FF16 (Joao 28:38-60) to purportedly teach the recited information in the last claim element of claim 1. The text referred to in FF16 (Joao 28:38-60), however, specifically refers to evaluating claims for payment. The evaluation report referred to at Joao 28:49-60 is merely for payment processing and indicates, at most, whether diagnoses and/or treatments are in-line with standards and should be paid or not.

The text at Joao 28:61-29:3 clearly states that a payer receives the evaluation report and not a patient. Applicants respectfully submit that the payer described in FF16 (Joao 28:38-60) is not the same entity as a patient. Even if the payer described in FF16 (Joao 28:38-60) were arguably assumed to be a patient, this assumption appears to be in contradistinction with the rest of Joao that specifically defines

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“patient” and ‘payer’ as different entities (see, for example the different definitions provided for “patient” and “payer” in Joao at 12:51-57 and at 13:8-19, respectively, and the separate listings of patients and payers in Joao such as at 2:22, 2:58 and 4:11-25.

In addition, Applicants submit that Joao fails to teach “**...determine progress of the patient on the selected treatment program and whether information... needs to be conveyed to the patient... in response to said progress determination**” (emphasis added) as recited in claim 1. Arguably, if an evaluation of report indicates denial of a claim, then the patient will be notified as such (e.g., perhaps by a denial report conveyed to the patient). Even if the evaluation report described in Joao 28:38-60 were arguably provided to a patient, the patient will at most learn that a claim for treatment has been denied or not for payment by the insurance provider. Applicants submit that evaluation of a treatment for insurance coverage is not a determination of progress of a patient on a selected treatment program as claimed. Also, a payer decision to pay a claim or not is not information selected to advise the patient on how to improve the integration of the selected treatment program into the patient’s lifestyle as recited in claim 1.

Accordingly, withdrawal of 35 U.S.C. § 103(a) rejection of the claims 1-7 is respectfully requested.

### **III. Conclusion**

In view of the above, it is believed that the application is in condition for allowance, including claims 1-7, and notice to this effect is respectfully requested. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the telephone number indicated below.

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*Invitation for a telephone interview*

The Examiner is invited to call the undersigned at (202) 659-9076 if further issues remain with allowance of this case.

*Deposit Account Authorization*

Although no fee is believed due by submission of this paper, authorization is hereby made to charge any fees due or outstanding, or credit any overpayment, to Deposit Account No. **18-2220** (Order No. 39994A).

Respectfully submitted,

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